Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Qwest Communications International, Inc.	)	**WC Docket No. 02-148**
	)	
Consolidated Application for Authority to	)	
Provide In-Region, InterLATA Services in	)	
Colorado, Idaho, Iowa, Nebraska and North	)	
Dakota	)	

To: The Commission

COMMENTS OF
ESCHELON TELECOM, INC.
IN OPPOSITION TO THE CONSOLIDATED APPLICATION OF
QWEST COMMUNICATIONS INTERNATIONAL INC
FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN
COLORADO, IDAHO, IOWA, NEBRASKA AND NORTH DAKOTA

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Eschelon Telecom, Inc. ("Eschelon") submits these Comments in response to the Federal Communications Commission's ("FCC's") Public Notice requesting comments on the Application by Qwest Communications International, Inc. ("Qwest") for authorization under Section 271 of the Communications Act to provide in-region, interlata service in the states of Colorado, Idaho, Iowa, Nebraska, and North Dakota ("Qwest's Application"). Eschelon believes that approving Qwest's Application at this time would be premature, given the problems with Qwest's commercial performance.

I. ABOUT ESCHELON

Eschelon was founded in 1996 and is a rapidly-growing provider of integrated voice, data, and Internet services. The company offers small and medium sized businesses telecommunications and Internet products including local lines, long distance,[1] business telephone systems, DSL, Dedicated T-1 access, network solutions, and Web hosting.[2] Eschelon employs more than 950 telecommunications/Internet professionals and currently provides service to more than 32,000 business customers in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. Eschelon is certified in Idaho, Nebraska, and New Mexico as well.[3]

Eschelon started out as a reseller but, over the last two and a half years, has built a network to provide facilities-based local exchange service using its own switches and collocations. Eschelon does not own its own fiber; it leases facilities. Eschelon owns and operates switches in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. In some cases (particularly when a customer is located outside of the area served by Eschelon's switch), Eschelon also orders UNE-P, UNE-E/UNE-Star,[4] or resale from Qwest to serve customers.[5]

Eschelon's target customers are small to medium size businesses. To put Eschelon's business in context, Eschelon serves or has served stores, offices, schools, churches, gymnasiums, libraries, museums, hospitals, clinics, warehouses, jails, florists, pizza delivery shops, restaurants, coffee shops, bail bonds offices, hair salons, automobile services, funeral homes, and other small to medium businesses. Eschelon's loop customers subscribe to an average of approximately 4 to 5 lines, and Eschelon's T1 customers subscribe to an average of

[1] Eschelon is a reseller of the long distance services of a large interexchange carrier ("IXC").
[2] For more information about Eschelon, please visit Eschelon's web site at www.eschelon.com.
[3] Eschelon also provides service to customers in Nevada. Because Nevada is not within Qwest's territory, however, Nevada is not discussed in these Comments. In these Comments, Eschelon provides examples from several of the states in Qwest's territory in which Eschelon operates, not only Colorado. Generally, Qwest uses the same systems and processes across its states.
[4] Regarding UNE-Eschelon ("UNE-E") and UNE-Star, *see* discussion below regarding billing accuracy and reporting.
[5] Eschelon often refers to customers and lines served through Eschelon's own switching facilities as "On-Net" or "On-Switch" and customers and lines served through UNE-E, UNE-P, or resale as "Off-Net."

approximately 16 access line equivalents. Eschelon's customers are not located only in the downtown, urban areas. In Colorado, for example, Eschelon has customers in Denver's northern suburb of Lafayette, as far south as Colorado Springs, and as far west as Golden. Looking at a map of Colorado shows that this covers a broad area. Eschelon has expanded beyond the larger metropolitan areas. For example, in Oregon, Eschelon is expanding from serving business customers in Portland to serving them in the Eugene and Salem areas as well.

Eschelon is an Interconnect Mediated Access ("IMA")-Graphical User Interface ("GUI") user. Eschelon has engaged a vendor to work with Qwest to implement IMA-Electronic Data Interchange ("EDI"), but that effort is in the early stages.

Qwest has indicated to Eschelon that Eschelon is Qwest's second largest Competitive Local Exchange Carrier ("CLEC") wholesale customer.

II. QWEST'S COMMERCIAL PERFORMANCE

Qwest needs to improve its commercial performance in the local market before entering the in-region interlata market. Eschelon raises performance problems with Qwest[6] through avenues such as Qwest's account/service management team[7] and to some extent Qwest's Change Management Process ("CMP").[8] Since January of 2001, Eschelon has also provided to Qwest a monthly "Report Card" summarizing Eschelon's experience with Qwest's performance. In the

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[6] Eschelon has also summarized problems in discovery responses to requests recently received from state commissions. *See, e.g.,* Exhibits 1 - 2. If Qwest has submitted discovery requests to the commissions asking for copies of discovery responses, Qwest may have also received copies of these documents through those processes.

[7] Each week, Eschelon provides to Qwest a lengthy issues log. Because confidential (customer identifying) information runs throughout the document, Eschelon has not attached a copy of the current issues log as an exhibit. But, Qwest has copies of the logs that it has received each week, including the most recent one. Eschelon personnel also participate in a weekly conference call with Qwest service managers to discuss the performance problems identified in the log and any others that have arisen. As documented in the logs, many resources are devoted to resolving these problems, and delays are common.

[8] *See*, *e.g*., http://www.qwest.com/wholesale/cmp/changerequest.html and http://www.qwest.com/wholesale/cmp/archive.html (current and archived Eschelon Change Requests).

April 2002 Report Card, for example, of 15 measures, Qwest received an "unsatisfactory" for 10 and a "satisfactory" for five of the measures. *See* Exhibit 3. Eschelon provides these Report Cards, along with backup data,[9] to Qwest monthly, and meets each month with Qwest executives to discuss the results. Over the last six months (November 2001 – April 2002), Qwest met satisfactory performance levels only 38% of the time.

Some of the commercial performance problems known to Qwest[10] that need to be addressed are described in the enclosed documents and also include:

A. Release 10.0 Change Preventing CLEC-to-CLEC Orders

Qwest has a documented process regarding how to submit CLEC-to-CLEC orders electronically.[11] Since the 10.0 Release on June 17, 2002, however, Eschelon cannot submit electronically CLEC-to-CLEC orders following that documented process, or at all when the circuit identification numbers are not populated in IMA. When trying to do so, Eschelon receives various error messages (such as cannot find Customer Service Record, "CSR"). The error messages are up-front edits, so Eschelon is not allowed to proceed with the order. Eschelon was not informed in advance of any change in Release 10.0 that should have caused this result. Qwest told Eschelon that a third party system change caused the problem due to edits in one system that were not in the other. The practical problem confronting Eschelon and other CLECs

[9] Because the backup data includes confidential (customer identifying) information, copies have not been attached as Exhibits. Qwest, however, has the copies of each Report Card, with back up data, that it has received each month from Eschelon since January of 2001.

[10] Because Qwest bears the ultimate burden of proof as to its commercial performance on all checklist items even if "no party files comments challenging compliance with a particular requirement," *see In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, at ¶ 47, FCC 99-404 (rel. December 22, 1999) ["FCC BANY Order"], if Qwest has not done so, Qwest should have brought these known issues forward in ongoing proceedings in discussions of Qwest's performance.

[11] *See* http://www.qwest.com/wholesale/clecs/migrateconvert.html; and http://www.qwest.com/wholesale/ima/gui/faq.html as of July 2, 2002.

is that due dates provided to end-user customers could be missed because Qwest's Release has prevented CLECs from relying on the documented process and placing CLEC-to-CLEC orders.

Eschelon submitted its first ticket with Qwest regarding this issue on June 21, 2002. Eschelon escalated the issue to its Qwest senior service manager and a Qwest process specialist, but they became unavailable while the issue remained unresolved. Several days went by with no update from Qwest. On July 1, 2002, Eschelon asked Qwest to correct the problem in IMA-GUI by the end of the day. Qwest did not correct the problem. On July 2, 2002, Qwest distributed an Event Notification (for Ticket Number 5970408) that states: "Work Around: IMA will remove the edit for AN placeholder of 000-000-0000-000 being invalid. Until fix is in place the LSR should be manually submitted. See URL: www.qwest.com/wholesale/clecs/escalations.html for contact information and/or faxing in your request." Eschelon does not know why Qwest waited until July 2, 2002, to distribute an event notification related to this issue, when Eschelon and Allegiance Telecom both submitted tickets on June 21, 2002. Eschelon has informed Qwest that the work around identified in the event notification is unacceptable to Eschelon. Manually faxing orders to Qwest would introduce the increased likelihood of error and all of the other problems associated with faxes. Eschelon also told Qwest that the ticket severity level should appropriately be level 1, not level 3.

The experience with Release 10.0 is not an isolated example. Eschelon's experience in dealing with releases, point releases, and patches is that it does not appear that the process and systems personnel at Qwest are coordinating sufficiently to determine the impact of system changes on existing Qwest processes. Qwest's research into the impact on manual processes is insufficient, because the systems changes have unexpected consequences. Eschelon then has to experience and report the problem and deal with the adverse impacts instead of avoiding the problem upfront.

B. <u>OSS – Lack of Flow Through</u>

On June 26, 2002, Qwest confirmed to Eschelon that any telephone number coming from a 1FB with CCMS, Centrex 21, Centrex or Centron for conversion to UNE-P or Resale POTS will not flow through. The orders will fall out of IMA for manual handling. In addition, the orders do not flow through the switch. They fall out for manual handling of Qwest switch translations. While the "disconnect" portion of the order flows through, the "new translation" falls out, which places the customer out of service. Eschelon end-user customers have been out of service for several hours until translations is worked or Eschelon opens a ticket to have the translations worked. Eschelon previously asked Qwest to provide true flow through for UNE-P and resale orders (*see* Change Request #SCR100201-1), but Qwest closed that Change Request with a status of "completed." Eschelon now believes that this was erroneous, because these orders do not truly flow through. Given the amount of "exceptions" listed on Qwest's flow through eligible chart, there are very few order types that flow through.

C. <u>OSS – Cumbersome GUI</u>

Eschelon recently participated in a Qwest-initiated conference call regarding Qwest's GUI. Eschelon uses the IMA-GUI to place its orders with Qwest. Qwest indicated that a third party tester had suggested that the GUI was cumbersome. Eschelon agreed with the tester. Although time for review and response was short, Eschelon identified at least nine areas in which the GUI could be improved. At Qwest's request, Eschelon submitted nine Change Requests to the Qwest CMP relating to these changes.[12] Eschelon will not know whether Qwest will make the changes until the Change Requests are processed.

Even assuming all of those changes are made, the GUI process will remain cumbersome as long as it continues to rely on so many manual processes. In many situations, Qwest instructs CLECs to select "manual handling" and insert remarks as part of the process for placing an order.[13]

D. UNE-P and Resale Customers Affected by Unannounced Dispatches

Qwest has apparently commenced a project to increase copper availability. Unfortunately, Qwest has failed to coordinate adequately with CLECs to avoid service disruptions. Eschelon first learned of this situation in the context of its migration of existing customer lines to UNE-P, but the problem also occurs with conversions of new customers to CLECs using UNE-P and resale. For orders that do not otherwise generally require a dispatch (such as conversions and reuse of facilities), Qwest nonetheless dispatches a technician to change cable and pair. If Qwest apprised Eschelon of its plan to do so, Eschelon could coordinate with Qwest and set end-user customer expectations. Qwest has not done that. At a minimum, this causes customer confusion, because Eschelon has told the customer that no technician would be needed. Instead of the expected seamless conversion, a Qwest technician appears and tells Eschelon's customer that the technician is going to take down the customer's service. This is disconcerting enough for the customer. If something goes wrong, the disruption may also be

[12] *See* http://www.qwest.com/wholesale/cmp/changerequest.html.

[13] *See*, *e.g.*, http://www.qwest.com/wholesale/clecs/migrateconvert.html (instructions for CLEC-to-CLEC conversions state: "The Manual Indicator, field 108a of the LSR form, must equal 'Y'"); http://www.qwest.com/wholesale/ima/gui/faq.html (instructions for how a CLEC issues a change order on a newly converted account when the CSR has not yet been updated state: "Select 'Yes' from the Manual Indicator drop down list on the Remarks Tab in the LSR window").

prolonged. In addition, depending on the work performed by Qwest, customer premise equipment could be affected (analog versus digital, modems, equipment settings, *etc*.). Notification and coordination are needed to address these issues.

On July 2, 2002, for example, a Colorado customer was supposed to convert to Eschelon. The order required no dispatch. But, a Qwest technician nonetheless arrived and changed a cable and pair. The Qwest technician failed to complete the cross connect at the demarcation. Therefore, the end-user customer – an insurance company – suddenly found that it could make no calls on a business day shortly before a holiday weekend. As of the afternoon of July 3, 2002, the customer could still make no calls. Qwest told Eschelon that it had tagged the lines at the demarcation, so Eschelon could dispatch a technician to fix the problem. Although Qwest created the service disruption, Eschelon went ahead and dispatched a technician to get the customer back in service. This should have been Qwest's responsibility.

When Qwest begins a project such as the project to increase copper availability, Qwest should provide adequate notice to CLECs and coordinate with them to avoid service disruptions. Also, Qwest should not be able to impose extra work and costs on CLECs to complete and correct work that Qwest is performing on its own. The orders placed by Eschelon did not require technical work, but Eschelon has nonetheless had to dispatch technicians or otherwise resolve these issues.

Regarding the magnitude of the problem, Eschelon will not necessarily know of all of the instances when this occurs. While a Qwest dispatch may surprise and displease a customer, the customer may choose not to call Eschelon. Then, Eschelon does not even have an opportunity to explain the problem.

E. <u>DSL – Repair</u>

According to Qwest's documentation, Qwest Digital Subscriber Line ("DSL") is available at retail rates with UNE-P, including UNE-P-Centrex (and Centron). *See*, *e.g.*, http://www.qwest.com/wholesale/pcat/unepcentrex.html ("You may convert existing Qwest Digital Subscriber Line (DSL) to UNE-P Centrex with Qwest DSL service. You may also request the installation of new Qwest DSL service on an eligible and existing UNE-P Centrex, subject to loop qualification and availability.") Nonetheless, Qwest is not fully prepared to deal with DSL repair issues. Qwest has said it does not have back end system records containing the DSL technical information needed for repair of Centron/Centrex Plus lines with DSL. On June 5, 2002, Qwest confirmed this to Eschelon. Qwest said that, when the service order is processed, the critical technical DSL information needed for repair drops off and does not populate in the Qwest back end systems. Qwest said this information is lost and cannot be retrieved. Qwest also said that this problem occurs in Qwest's Eastern and Central billing regions. Those regions include Colorado, as well as Arizona, Minnesota, and Utah, of Eschelon's states. This issue is of particular concern to Eschelon in Colorado and Minnesota, because of Eschelon's significant number of existing Centrex Plus/Centron lines in those states.

Due to this problem, when Eschelon calls the Qwest repair centers (general repair or DSL repair), the Qwest representative will have no repair record with the information needed to repair a trouble in the DSL portion of the line. The Qwest representative may not even know that the customer has DSL. At a minimum, the customer will experience delays, and Eschelon will have to expend resources on escalating and resolving the problem, if it can be resolved. The DSL may have to be re-installed, because the technical information about the existing DSL service is lost.

Qwest has asked Eschelon to provide additional forecasting and conduct additional monitoring of repair issues because of this problem. This imposes extra resource burdens on Eschelon. More importantly, Eschelon's end-user customers will be adversely affected.

In addition to the above repair problem, a new problem arose this week. There is insufficient time before this filing to determine all of the facts, so Eschelon will simply mention it here as a possible issue. It appears that Qwest changed the routing for the telephone number that has been given to Eschelon for DSL repairs without adequate notice to CLECs (or to Qwest representatives receiving calls). Now, when Eschelon calls the same number, the Qwest personnel are unfamiliar with the issues and do not know why Eschelon is calling them. Eschelon has submitted a repair ticket to obtain the correct telephone number for DSL technical support and repair. Eschelon has been unable to locate a Qwest notice to CLECs stating that the process or telephone number changed. Eschelon will continue to investigate and escalate this issue.

F. <u>DSL – Delay When Qwest Disconnects in Error</u>

When Eschelon converts a customer from Qwest to Eschelon, Qwest at times disconnects the customer's DSL in error. For example, the Customer Service Record ("CSR") may be inaccurate and show the DSL on the wrong line. Although the error is Qwest's error, Qwest has said that its policy is to provide the CLEC the standard interval before Qwest will restore the DSL to the end-user customer. Therefore, the CLEC's end-user customers must wait days for their DSL service to be restored, when it never should have been disrupted. For some business customers that rely heavily on DSL service, a disruption in DSL service can be as important or more important than a disruption in voice service. If Qwest disconnects the DSL service of one of its retail customers in error, Qwest retail is unlikely to tell the customer that Qwest's policy is to make the customer wait for days to restore the customer's DSL service.

G. DSL – Qwest Disconnects DSL Early (Before Voice)

When Eschelon converts a customer from Qwest to Eschelon, Qwest at times disconnects the customer's DSL early. For example, Eschelon submits an order for UNE-P with DSL and indicates the due date. Qwest then disconnects the DSL before the due date. The customer still has voice service but loses DSL service. As indicated, some business customers rely heavily on DSL service, and a disruption in DSL service can be as important or more important than a disruption in voice service. This situation not only causes the end-user customer to lose its DSL service and become frustrated, but also causes additional work for both carriers. It also causes customer confusion because the customer believes that it has changed to a new provider. In fact, the customer is still a customer of Qwest's because the DSL was disconnected before the due date for the conversion to the CLEC. This leads to a frustrating and unsatisfactory experience for the customer, which may blame the CLEC even though Qwest disconnected the DSL early. Eschelon previously encountered a similar problem at Qwest when Qwest would take down the customer's voice mail early (before the due date for the voice service). Although the voice mail problem has since been resolved, the DSL problem appears similar and causes similar headaches.

H. DSL - Migration of Customers

Qwest has no process to migrate an existing CLEC customer (*e.g.*, on resale or UNE-Star) with DSL to UNE-P without bringing the DSL service down. When Eschelon attempted to move existing customers with DSL to UNE-P, as it is entitled to do under its interconnection agreements, the DSL service went down. DSL service is important to end-user customers and, when moving from one form of service to another, the transition should be seamless to the end-user customer. Eschelon has had to postpone its plan to move existing customers with DSL to UNE-P until Qwest develops and implements a process that does not have this adverse impact to the end-user. In the meantime, although Eschelon is entitled to the lower rates available with UNE-P, Qwest continues to bill Eschelon at higher rates, even though Eschelon is prepared to move the customers now. Qwest has not provided a date when a process will be in place.

I. **DSL - Ordering**

Another DSL issue arose in the last few days. There is insufficient time before this filing to determine all of the facts, so Eschelon will simply mention it here as a possible issue. Qwest's Qhost system was down on June 28 and July 1, 2002, and Eschelon continued to have problems on July 2, 2002. Eschelon uses this Qwest ordering tool to obtain information needed to complete Eschelon's work. When the system is down, Eschelon can not obtain information necessary to complete DSL installations. Eschelon has been unable to locate a Qwest notice to CLECs of the Qhost outage. Eschelon will continue to investigate and escalate this issue.

J. **Maintenance & Repair – Discrimination**

When Qwest provides repair services to its retail customers, Qwest provides a statement of time and materials and applicable charges to the customer at the time the work is completed. When Qwest provides repair services to its CLEC wholesale customers, however, Qwest does not do so. Despite Eschelon's requests that Qwest provide this information to CLECs,[14] Qwest

[14] *See*, *e.g.*, http://www.qwest.com/wholesale/downloads/2001/011221/122101email.pdf, p. 13 of 21 ("More information on the bill is only a part of the request made by Allegiance, Covad, and Eschelon in their joint Escalation. With respect to billing, we also asked Qwest to 'Ensure that CLECs receive notification, at the time of the activity, if a charge will be applied, because CLECs should not have to wait until the bill arrives to discover that Qwest charged for an activity.' (Joint Suppl. Escalation, p. 9.) As Eschelon said at the most recent CMP meeting, the CLEC needs to know at the time of the event that a charge will apply. Immediately after the work is completed,

does not provide needed information until the monthly wholesale invoices arrive at a much later point in time. This places CLECs at a disadvantage. CLECs cannot dispute a charge at the time the work is completed, when all of those involved are most likely to know the facts necessary to determine the accuracy of the charge. CLECs must wait until the bill is received, and then it is a huge task to analyze after the fact what happened in each situation and whether a charge should have been applied.

K. Maintenance & Repair – Branding and Customer Confusion

Although Qwest has refused to provide CLECs with a statement when work is completed, Qwest nonetheless has at times left such Qwest statements with Eschelon's end-user customers in Arizona and Washington. Eschelon has examples of this again this month. Eschelon provides such examples to its service manager. In a typical situation that occurred this month, Qwest provided a US West-branded statement of time and materials to Eschelon's end-user customer and required Eschelon's customer to sign it. The Qwest Wholesale web site,[15] under Branding, states: "Qwest technicians will use unbranded maintenance and repair forms while interfacing with your end-users. Upon request from you, Qwest will use branded repair forms provided by you. Qwest technicians will not discuss your products and services with your end-users. Such inquiries will be redirected to you." This language does not reflect reality. These situations cause customer confusion, as well as additional work for Eschelon in clarifying the issue with customers and resolving the issues with Qwest.

Qwest needs to send CLEC a statement of services performed, testing results, and applicable charges (by telephone number) that will appear on CLEC's next invoice. If Qwest is claiming that a charge was authorized, a process should also be in place to provide timely documentation as to who authorized the charge. If CLECs must wait until the bill is received, it will be a huge task to go back and analyze what happened in each situation and whether a charge should have been applied. All of these kinds of issues should be discussed and reviewed jointly before implementation.").

L. Maintenance & Repair – Untimeliness of Bills

The problem of not receiving a statement when work is completed is compounded by the problem of untimely bills for maintenance charges. Eschelon's Colorado bill for November 2001 contained charges going back to August and September of 2001. Eschelon's Colorado bill for December 2001 contained charges going back to September of 2001. Eschelon's Colorado bill for January 2002 contained charges going back to September, October, and December of 2001. Eschelon's Colorado bill for February 2002 contained maintenance charges going back to October and November of 2001. Bill verification becomes virtually impossible when dealing with such outdated information.

M. Maintenance & Repair – Insufficient Information on Bills

The problems of not receiving a statement when work is completed and untimeliness of bills are compounded further by the lack of sufficient information on Qwest's invoices. For unbundled loops, Qwest has not included circuit identification information in Eschelon's bills for maintenance and repair charges. This is true even though Qwest requires Eschelon to submit the repair ticket containing the circuit identification. The bill also does not include the date of the dispatch or trouble repair. Instead, Qwest provides the date on which Qwest writes the order to initiate the charge on the bill, which could even occur in a different month. If Eschelon has multiple tickets for the same circuit identification number, the bill does not provide sufficient information from which Eschelon may identify the ticket to which the charge applies. In Oregon and Washington, Qwest does not provide the Universal Service Ordering Code ("USOC") for the charge. Although Qwest claims to have a high billing accuracy rate, Qwest could not show it

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[15] *See* http://www.qwest.com/wholesale/clecs/maintenance.html.

using the information it provides to Eschelon. Eschelon believes that circumstances exist when Qwest charges Eschelon although it should not do so, but the insufficient and untimely information provided by Qwest prevents Eschelon from being able to establish this in many cases. As discussed above with respect to receiving a statement when work is completed, Eschelon should be able to inquire about a charge at the time the work is performed, when the facts are known, and should not have to bear the burden and expense of trying to decipher Qwest's bills much later.

N. Maintenance & Repair – Authorization and Accuracy for Closing Tickets

Eschelon has complained to Qwest that Qwest at times closes tickets without calling Eschelon for authorization. Eschelon has also pointed out that Qwest closes tickets in some cases with the incorrect cause and disposition codes.

O. Maintenance and Repair – Pair Gain/Testing

Over Eschelon's objections to the process used to do so, Qwest instituted an additional or "optional" testing policy and rates.[16] Qwest said that it will either reject a trouble ticket or offer to test for CLECs when a CLEC does not conduct testing of loops before submitting a trouble ticket. Although Eschelon has not opted in to any SGAT containing language to this effect, Eschelon does conduct testing before submitting trouble reports. When Qwest uses pair gain (IDLC), however, Eschelon cannot obtain accurate testing results. Because Eschelon cannot do so, pursuant to Qwest's policy, Qwest will charge Eschelon the so-called "optional" testing charge (which does not appear in all of Eschelon's interconnection agreements). Qwest may also dispatch because Qwest cannot remotely test either and charge Eschelon a dispatch charge. If

[16] *See* http://www.qwest.com/wholesale/downloads/2001/011221/122101email.pdf.

the trouble is not in Qwest's network, Qwest will bill Eschelon not only a testing charge and a dispatch charge, but also a No Trouble Found charge. Eschelon should not be incurring all of these charges when the inability to provide accurate test results is due to Qwest's use of pair gain.

On Qwest's web page, under the heading of Maintenance and Repair,[17] Qwest states: "Trouble isolation and testing is a joint process. You are responsible for testing and providing trouble isolation results prior to submitting a trouble report to Qwest. If you elect not to perform trouble isolation testing, Qwest will offer you the option of performing the testing on your behalf." Qwest also lists on that web page, as "Examples of acceptable test results" that "You report: "Pair Gain," you need to relay the actual test results." When Eschelon reports "pair gain" as a result, however, Qwest has refused to open a repair ticket unless Eschelon authorizes the "Optional Testing Charges." If the language on the web page means that "pair gain" is an acceptable test result, as it appears to Eschelon, Qwest is not complying with its documented process in these cases.

P. <u>Maintenance and Repair – Reciprocity</u>

Qwest told Eschelon that, although Qwest will charge Eschelon for testing-related charges, Qwest will not accept charges from Eschelon for testing that Eschelon conducts for Qwest in the same circumstances. Qwest's policy in this regard gives Qwest an advantage over every other carrier that must pay charges in these situations.

[17] *See* http://www.qwest.com/wholesale/pcat/unloop.html.

Q. <u>Loss and Completion Reports</u>

Qwest retail has a competitive advantage over wholesale customers, because Qwest retail and not Qwest wholesale receives accurate customer loss information. A primary problem with the Loss and Completion Reports is that the reports do not provide CLECs with the intended ability to identify which customers have left the CLEC for another carrier. This is a significant issue that adversely affects the CLEC's reputation and the end-user customer. If Eschelon cannot determine that a customer has left (a "loss"), Eschelon continues to bill the customer. Eschelon cannot send a closing bill and settle the account. Doing so later significantly decreases the likelihood of full collection. Eschelon and other CLECs are made to look bad with the customer, who does not understand why a carrier would not know that the customer has left. Eschelon has invested significant amount of time into attempting to improve the Loss and Completion reports and has obtained improvements. Additional issues remain, however. Eschelon has asked that only losses appear on the loss report (rather than including all orders submitted on the report). Qwest has agreed to add a column to the loss report to indicate whether the loss is internal to the CLEC or external. This change has not yet been made, however. The loss report is also only as accurate as the typist who manually enters the USOC or FID. Manual entry is still required on the service order to transmit information to the loss report. In addition, the information on the loss report also appears on the completion report but, due to errors and different criteria for the reports, the information may not appear on the Loss and Completion Reports for the same conversion on the same day. The loss may appear in the loss report one day, and the completion for the same customer may appear in the completion report on another day.

R. Inadequate Notice of Rate and Profile Changes

Qwest denied Eschelon's escalation regarding advance notice of rate and profile changes, although it incorporated some of Eschelon's proposals.[18] Eschelon was able to obtain some additional information regarding rate changes, but the information provided by Qwest is still inadequate. For example, whereas Eschelon asked Qwest to provide the previously billed rate and the new rate, to facilitate bill verification, Qwest provides general information, such as a reference to a discount change without enough information to easily identify the impact on the bills.[19] When Qwest discovers a claimed error or when Qwest changes a rate, Qwest sends a general, high level notification to all CLECs. It has started to also provide some detail of the changes to the CLEC in a spreadsheet. Qwest populates the spreadsheet with all of the USOCs that Qwest indicates the CLEC is allowed to order under the Interconnection Agreement. Eschelon has asked Qwest to provide, on the spreadsheet, which USOCs Eschelon orders. This is necessary because of the manner in which Qwest is sending its notices. For example, in February of 2002, Qwest sent Eschelon a spreadsheet that included more than 3,000 USOCs, only one of which Eschelon was currently using. Researching each USOC to determine what Qwest said it had incorrectly billed and the impact to Eschelon's invoices is a labor-intensive, time-consuming task. This task would have been completely unnecessary if Qwest had simply provided meaningful notice to Eschelon of the proposed rate change to the one USOC used by Eschelon. Qwest also rejected Eschelon's proposals for presenting the rate and alleged errors as

[18] *See* http://www.qwest.com/wholesale/downloads/2002/020214/CLEC_Response013102.pdf and Qwest responses on same web page.

[19] Qwest provides to CLECs either 1 minus discount (ending with a percentage) or a tariffed rate, rather than the rate less the discount percent that appears on the invoice. To ensure meaningful notice of rate changes, Eschelon has asked Qwest to supply the actual incorrect rate (dollar amount) and the actual correct rate (dollar amount). For

proposed changes. Qwest notifies CLECs of changes, which CLECs must then challenge after the fact (if they are provided with enough information to do so and receive the notification before Qwest implements the correction).

Although rate changes may seem straight forward, CLECs cannot necessarily predict when Qwest believes a rate has changed. For example, Eschelon first raised the issue of notice of rate and profile changes when Qwest, without Eschelon's knowledge, conducted a "scrub" of the interconnection agreements. Pursuant to that "scrub" (a term used by Qwest at the time), Qwest deleted a USOC in Eschelon's profile because Qwest unilaterally determined that Eschelon did not have a certain type of loop installation in its interconnection agreement (*i.e*., the interconnection agreement did not include the rate sought by Qwest). Although Eschelon ultimately persuaded Qwest that Eschelon's interconnection agreement did include this type of loop installation, Qwest deprived Eschelon of the opportunity to raise this issue in advance of the profile change. Qwest actually started rejecting Eschelon's orders for loops and then Eschelon had to escalate to get the orders re-started. This happened in at least three states (Minnesota, Arizona, and Utah). Although Eschelon hopes that this particular issue will not arise again, this example highlights the problem created if Qwest may merely notify CLECs of a rate or profile change after the fact instead of involving the CLEC in the decision. Qwest's current policy of notifying CLECs of changes instead of attempting to gain CLEC agreement, as proposed by Eschelon, applies in Colorado, Idaho, Iowa, Nebraska, and North Dakota, as well as Qwest's other states.[20]

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example, if Qwest bills Eschelon $10.00 for a line and then the rate to be billed to Eschelon changes to $9.00, the notification should show $10.00 as the existing rate and $9.00 as the new rate.

[20] *See* http://www.qwest.com/wholesale/cmp/escalations.html (Qwest responses).

S. Policy of Applying Rates not in Eschelon's Interconnection Agreements

Qwest has a policy of applying rates from Qwest's Statement of Generally Available Terms ("SGATs") even when those rates have not been approved by a state commission (as opposed to simply being allowed to go into effect) and a CLEC has not opted in to the SGAT. Eschelon has not opted in to any SGAT. Nonetheless, in an email dated June 11, 2002 to Eschelon, the Qwest sales representative for Eschelon said, for example:

> "With respect to the rate discussion, Qwest's position has not changed. We will be billing Commission ordered rates, where they exist. If they don't exist, we'll be billing rates in your contract, if they exist for the type of installation we are doing and if there are no contractual rates, we will bill SGAT rates."

Because Eschelon has not opted in to any SGAT, Qwest should not apply these charges to Eschelon. Nonetheless, Qwest does charge some SGAT rates to Eschelon, even after Eschelon has objected to such charges. In some cases, the charge should be zero. For example, Qwest should not be able to charge Eschelon for features in states in which the features are included in the switch port price, regardless of whether Qwest has proposed feature rates in its SGAT. In other cases, if a charge is due and really is not in the interconnection agreement, Qwest should negotiate a rate, obtain commission approval for a rate, or at least reach agreement on using the commission approved cost models and processes to calculate the rate.[21] Qwest should not be able to simply select a rate and apply it unilaterally. In Minnesota, the Public Utilities Commission ("MPUC") recently voted to adopt (with some modification) the Findings of Fact, Conclusions of Law, and Recommendation of the Administrative Law Judge in *In the Matter of Onvoy Inc.'s Complaint Against Qwest and Request for Expedited Hearing*, MPUC Docket No.

P-421/C-01-1896 (April 12, 2002).[22] Onvoy filed a successful complaint against Qwest regarding the manner in which Qwest proposed to true up its charges for caged and cageless collocation. In calculating the true-up, Qwest used its own prices. The MPUC found that Qwest should have used the AT&T/MCI HAI model previously adopted by the MPUC in the first cost case, even though that model had to be adjusted or used as an approximation to calculate the particular rate. CLECs should not have to establish which model applies every time a rate is needed. Pursuant to its policy of applying SGAT rates when Qwest unilaterally interprets a contract to not include a rate, however, Qwest is applying its proposed rate and methodology on CLECs.

Qwest's policy of notifying CLECs of rate changes which CLECs must then dispute after the fact if they disagree compounds the problems created by Qwest's policy of applying SGAT rates in non-SGAT situations. CLECs must devote time and energy to verifying and disputing the bills before Qwest establishes a basis for charging the SGAT rates. Generally, Qwest does not even identify in advance when it is applying an SGAT rate, so CLECs must spend time identifying and verifying the issue.

Qwest is aware of Eschelon's long-standing position that the SGAT rates do not apply to Eschelon. Qwest should not be reporting that bills which include these rates are accurate for CLECs that have not opted in to the SGAT. Moreover, the burden to prove the rates as inaccurate in these cases should not be on Eschelon and other CLECs.

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[21] The fact that the Colorado commission did not adopt all of Qwest's proposed SGAT rates in its recent cost case suggests that not every SGAT rate is based on a commission approved methodology.

[22] If a written order has been issued as to the MPUC's vote, Eschelon has not yet received a copy and has not found a copy on the MPUC web page. An Eschelon representative was present for the MPUC's public deliberations and vote.

T. **<u>Billing Accuracy</u>**

As many of the above issues demonstrate, Eschelon does not believe its bills are accurate. Eschelon's records show that, as of the end of May 2002, Eschelon has more than $2.2M in outstanding billing disputes with Qwest spread across all Qwest states where Eschelon operates. Given this, Eschelon questions a claim that, by any realistic standard, Qwest's bills are 99-100% accurate. The disputed amounts encompass different types of disputes, including (1) inaccurate rates; (2) invalid rates not ordered by State Commissions or mutually negotiated between both parties; (3) charges that are not applicable to Eschelon such as termination penalties, exempted taxes, directory advertising, and third party toll; and (4) rates that are not TELRIC such as billing maintenance and repair charges from Qwest's FCC tariffs.

Eschelon does not receive all information according to Qwest's Customer Guide to Billmate (Qwest's electronic version of their CRIS bill). Eschelon submitted a Change Request to Qwest's CMP in September of 2000 to ask Qwest to populate all fields of the billmate file. Although some corrections were made, some states, such as Oregon and Washington, do not yet have USOCs populated in all Billmate files. In the UNE-P invoices that Eschelon is now currently receiving, multiple columns in Billmate are not populated with information that is supposed to be reflected according to Qwest's Billmate Guide. In addition, Qwest's Billmate product does not break out usage for shared transport and local switching, which precludes validation of rates and usage. Validating zone prices is also affected because Qwest does not provide the CLLI code on the invoice.

In addition to the issues discussed above, 100% of the bills for UNE-Eschelon/UNE-Star are inaccurate. *See* Exhibits 4 - 5 (Affidavits of Lynne Powers and Ellen Copley). As described in the Affidavit of Lynne Powers, an interim credit/true-up process is used instead of accurate billing. In March 2002 alone, Qwest eventually agreed that its credit calculation was almost $50,000 too low. Therefore, even the interim process results in inaccurate charges. The bills for the UNE-Star product cannot be described as accurate. As of May of 2002, UNE-Star represents approximately 60% of Eschelon's total monthly invoice amount.

As described in the Affidavit of Lynne Powers, Eschelon is in the process of moving many lines from UNE-Star to UNE-P. *See* Exhibit 4. Because this process commenced only recently, Eschelon has only recently started to receive invoices from Qwest and has had little time to fully review them. Following is a preliminary list of issues that Eschelon is reviewing with respect to the Colorado and Minnesota invoices:

1. <u>Colorado BAN 303-B11-6766 997 (May 28, 2002)</u>

a. Includes charges for stand-by line usage - appropriate for UNE-P?

b. Billing discounted tariff rate of $1.04 per call for directory assistance calls, rather than the correct facility-based rate of $0.34 per call.

c. Billing a discounted tariff rate for per-call activation charges (such as last call return) when these feature costs are included in the local switching/port charges.

d. Billing inaccurate non-recurring charges ("NRCs") for UNE-P installs. There are many occurrences of $75.83 charges for a new UNE-P line, when the Commission ordered rate is $57.87. In addition, for many existing UNE-P line installs, Qwest is billing Eschelon $8.35, when the ordered rate is $0.71. Neither of the higher rates mentioned have been negotiated by the parties.

e. Duplicate charges for LNP and flat rated usage charges on single ANI.

f. Qwest uses its own estimate of usage charges instead of billing them accurately in some cases. *See* http://www.qwest.com/wholesale/pcat/unepcentrex.html (UNE-P-Centrex: "Until Qwest systems are able to record and bill actual usage information, Shared Transport Originating MOU and Local Switching Originating MOU will be billed at a flat monthly rate based on assumed MOU."). Qwest unilaterally sets the estimate, and Eschelon had no opportunity to discuss and negotiate an appropriate rate.

g. Some incremental zone charges (lines outside Zone 1) are billed twice (double billing) -- once separately as an increment and then again combined with the line charge/port charge.

h. Qwest's calculation of fractional charges are inaccurate.

For Colorado, these issues by themselves account for a preliminary billing error rate of approximately 9.3%.

2. Minnesota BAN 320-Z28-2603 (May 28, 2002)

Many of the same issues present on the Colorado invoice are present on the Minnesota invoice. In addition, Eschelon has raised another issue with Qwest. Qwest is billing Centrex resale rates on UNE-P lines. Qwest responded that it will address the issue in future billing months by posting all common block lines into the correct billing system. It is burdensome, however, for Eschelon to identify this issue and then wait one or two months to determine if the problem is indeed corrected and appropriate credits applied.

For Minnesota, the UNE-P issues by themselves account for a preliminary billing error rate of approximately 18.7%.

If, taken together, all of the billing and rate issues raised by Eschelon do not change the result for billing accuracy under the PID measurement, Eschelon believes the measure is faulty and does not capture the CLEC experience. When a CLEC is as dissatisfied with the billing process as Eschelon is with Qwest's billing process, it is difficult to be told that the bills are allegedly perfect.

U. Reporting

Although Eschelon's conversion from UNE-E (with resale billing) to UNE-P has only recently commenced, Qwest is already reporting Eschelon's UNE-E/UNE-Star lines as UNE-P lines for purposes of the Regional Oversight Committee (ROC) Performance Indicator Definition (PID) data. *See* Exhibit 4 (Affidavit of Lynne Powers). Previously, Qwest reported these lines as business lines, which is how the lines appear on the bill received by Eschelon. In reviewing the PID data recently, Eschelon found that Qwest's reporting of the lines changed from business lines to UNE-P lines in approximately November of 2001.[23] At that time, Qwest changed its reporting not only on a going forward basis, but also retroactively to January of 2001 so that months previously reported as business lines were then reported as UNE-P lines. *See id.* Eschelon was not notified in advance of this change.

V. Switched Access

Over a period of time, Eschelon complained to Qwest that Qwest was not providing complete and accurate records from which Eschelon could bill interexchange carriers access charges for UNE-E/UNE-Star and On-net customers. As an example, if a Qwest retail customer who has selected Qwest as the intraLATA toll PIC calls an Eschelon UNE-E/UNE-Star local customer, Qwest should provide a record of that intraLATA toll call to Eschelon, so that Eschelon can bill Qwest for terminating access. Eschelon needs an accurate report of switched access minutes of use ("MOU"), so that Eschelon may properly bill interexchange carriers for access.

[23] Although separate categories are used for other products (such as UNE-P-POTS), separate categories were not created for UNE-E products (such as UNE-E-POTS). If Qwest is claiming that it included UNE-E lines with UNE-P lines because there was not a separate category, Qwest could have simply created another category, as it did with UNE-P-POTS.

With respect to missing switched access minutes, Eschelon's position that MOU are missing was supported by an audit, external and internal datapoints, and Qwest's own admissions. First, an auditor retained by Eschelon made a number of calls that were not found in the access records Qwest provided to Eschelon, and Qwest did not locate those calls. Second, as a reality check, Eschelon provided Qwest data showing that the MOU provided by Qwest to Eschelon for UNE-P are substantially lower than the MOU received by Qwest, other RBOCs, and Eschelon for on-net lines. Finally, Qwest admitted that the MOU that it provided to Eschelon did not include intraLATA toll traffic carried by Qwest. On that basis alone, the MOU were understated.

Qwest disputed Eschelon's claims as to the vast majority of the missing minutes. Recently, the number of minutes reported to Eschelon jumped significantly and became closer to the number of minutes that Eschelon has maintained it should have been receiving all along.[24] This is another, significant datapoint supporting Eschelon's position that MOU were missing for a long period of time. If Qwest was also understating MOU for other CLECs, CLECs were unable to bill interexchange carriers for access charges for that period of time.[25]

The increase in number of minutes occurred very recently, and Eschelon does not know yet whether all of these minutes will be billable or whether this increase in the number of minutes will continue.

[24] Although Qwest may claim that this is due to a change from use of an interim process to use of Daily Usage Files ("DUF"), Eschelon previously attempted to move off the interim process. Qwest asked Eschelon to return to the interim process, because the long-term process was not working at that time.

[25] For a period of time ending with February 28, 2002, Eschelon and Qwest settled the switched access issue. From February 28, 2002 until the usage increased recently, minutes were missing that Eschelon otherwise could have used to bill IXCs. Even after the usage increased, Eschelon still has concerns about the issue of Qwest-carried intraLATA toll traffic.

W. Collocation

In its negotiation of interconnection agreements for all of the states in which Eschelon operates or is certified, Qwest and Eschelon have reached impasse with respect to certain collocation issues. *See* Exhibit 6. With respect to off-site adjacent collocation, for example, Qwest has refused to agree to provide this type of collocation, even though Eschelon has provided to Qwest evidence that another RBOC is providing it. *See id*.

X. Change Management Process

The Change Management Process ("CMP") redesign process is not fully completed, and the final stages were completed in a manner that precluded full review and participation, particularly for small carriers. When the redesign team was initially formed, the plan was to rely primarily on "working" sessions rather than activities outside of the meetings. This was, in part, due to what CLECs then viewed as an aggressive schedule. By the end of the sessions, so many documents were being circulated and so much work expected outside of the many working sessions that one or more persons could do nothing but CMP redesign work. Eschelon does not have that kind of resources. The need for this was driven more by Qwest's self-imposed 271 deadlines than outside factors.[26]

[26] Although Qwest was in a hurry to try to finish, Qwest could have taken some simple steps to advance the goals of the group that it did not take. For example, with respect to the production support language developed near the end of the recent working sessions, CLECs pointed out several deficiencies in the language and provided suggestions for expanding the language. Nonetheless, at the next session, Qwest's proposed language had changed little and in fact some language had been deleted. The group then spent a day and a half, or longer, drafting language to describe Qwest's existing production support process. At one point, after the group had toiled over some language, a Qwest process specialist agreed with language drafted by the group and said words to the effect of: "yes, that is what my document says." Qwest undoubtedly has internal documentation that describes relevant portions of its existing processes. If the documentation contains confidential information, pertinent documents could have been redacted or revised before distribution to CLECs. An advantage of this approach would have been that Qwest and CLECs would be working from consistent language when implementing these processes. Instead, the redesign team had to re-invent the wheel in this and other situations. This not only took more time but also increased the likelihood that some issues may not have been covered completely or consistently. Another example of how Qwest could have

The CMP documentation is not completely finalized, and redesign meetings or calls continue. The redesigned process is only beginning to be implemented at this time. At the most recent CMP monthly product and process meeting, discussions were held about whether the process was being followed and how it should apply. It is too early to conclude that Qwest is complying with the redesigned process.

Y. Tandem Failure Events

Qwest has had six failures at Qwest tandem switches in its region in the last three months (seven since October of 2001). In addition, on May 21, 2002, a Qwest Litespan 2000 went down in Salt Lake City (Draper Central Office). The tandem failure events occurred as follows:

October 2-4, 2001	Minnesota
March 18, 2002	Washington
March 19-20, 2002	Utah
March 29, 2002	Oregon
May 16, 2002	Washington
June 20, 2002	Utah
June 26, 20002	Minnesota

Eschelon has submitted informal complaints to the state commission staffs in Utah, Washington, Minnesota, and Oregon about these tandem failure events. Although these failures did not occur in Colorado, the problem is a multi-state problem in Qwest's territory. Qwest has not indicated that different conditions exist in Colorado or any other Qwest state that would prevent the problem from occurring in those states as well.

Each of the failures has adversely affected Eschelon and its end-user customers. For example, in the Salt Lake City tandem failure in June of 2002, approximately 1 out of every 2

advanced the meetings was to provide more operational personnel for pertinent discussions. Many of the process specialists are liaisons who do not have the extent of first-hand experience that would have benefited discussions.

long distance calls failed. Approximately 1 out of every 3 local calls failed. While these numbers would vary throughout the outage, this helps describe the problem. The June Utah outage lasted for more than 2 hours. The previous outage in Salt Lake City lasted 14 hours. Customers are threatening to leave, and some have left, Eschelon as a result of these situations.

A tandem failure should be rare. Qwest has not provided Eschelon with evidence to show that these problems will not continue to occur. Tandem failures are particularly harmful to small carriers, such as Eschelon, which do not have the volume to attract IXCs to build trunking to them. Carriers should not have to build unnecessary trunking, or otherwise incorporate inefficiencies in their network, because Qwest's network is unreliable.

The problems are Qwest failures at the tandem. Qwest sent notices to CLECs of its tandem failures. Qwest labeled those notices as confidential, however, which deters CLECs from distributing the notices to customers to show that the problem is at Qwest's tandem. The fact that Qwest has a tandem failure is something customers should know. Customers have asked Eschelon for evidence that the problem was in Qwest's network. Eschelon asked Qwest to provide non-confidential documentation confirming that the failures were at the Qwest tandem. But, Qwest has refused to put anything in writing for Eschelon to use in explaining the problem to end-user customers.

Some customers inadvertently called Qwest when the problems occurred. Eschelon reported to Qwest that some of these customers claim to have received incorrect information from Qwest. The proper procedure is for Qwest's representatives to refer calls from our customers to Eschelon, but it does not appear that they have followed that procedure consistently.

Eschelon's end-user customers are experiencing service problems. They are businesses and tell us that this affects their business. Eschelon's business is also adversely affected. There is not only an immediate financial impact from losing customers but also a longer-term financial detriment from the damage to Eschelon's reputation. And, on a going forward basis, Eschelon needs to be able to rely on Qwest's network and to plan its business with confidence in the network.

III. CONCLUSION

As this information regarding Qwest's commercial performance demonstrates, approving Qwest's Application at this time would be premature.

July 3, 2002 ESCHELON TELECOM, INC.

By: ______________________________

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